



MINUTES OF THE LAND RECLAMATION COMMISSION MEETING

January 22, 2004

Vice Chairman Jim DiPardo called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Jim DiPardo; Mimi Garstang; Kevin Mohammadi; and Dr. Gregory Haddock.

Staff Present: Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Bill Zeaman; Andy Reed; Steve Femmer; Larry Hopkins; Mike Mueller; and Shirley Grantham.

Others Present: Amy Randles, Attorney General's Office; Charles Sandberg and John W. Coleman, Office of Surface Mining; Jim Rolls, Mike Giovanini, and Dan Upp, Associated Electric Coop., Inc.; Mikel Carlson, Gredell Engineering; Chris Schwedtmann, MEC; Daniel R. Schuette, Deputy Director, Air and Land Protection Division, Missouri Department of Natural Resources; Jack Atterberry, Associated General Contractors of Missouri, Inc.; Kevin Thomas, Team Excavating; Ed Twehous, Twehous Excavating; and Joe Nasser, ECS.

1. ELECTION OF OFFICERS FOR 2004

Action on this item was delayed until the March meeting, as not all Commission members were present.

2. MINUTES OF THE NOVEMBER 19, 2003, MEETING

Dr. Haddock made the motion to approve the Minutes as written. Ms. Garstang seconded; motion carried unanimously.

3. ABANDONED MINE LAND ACTIVITIES

AML Status Report (Attachment 1). Mr. Cabanas presented this report to the Commission. He stated regarding the Perche Creek Project located in Boone County, site grading continued during December 2003 and early January 2004, but has progressed slowly due to wet site conditions. The earthwork at the main project area is approximately 40 percent complete, and the earthwork at the Cemetery Gob site is approximately 50 percent complete.

Mr. Cabanas stated a project is currently under design called the Miller's Creek Project located in Callaway County. The plan for this project consists of filling in two pits

filed with acid water, grading barren spoils, and revegetating the entire area. Mr. Cabanas stated the staff plans to complete the design and advertise the project for construction bids by early spring 2004, subject to availability of AML funding.

Mr. Cabanas stated the site clearing and grubbing are now complete and earthwork is substantially complete on the Mindenmines Highwall AML Emergency Reclamation Project in Barton County. Reseeding will occur within the next few weeks.

Mr. Cabanas stated two non-coal shaft closure projects have been awarded. The first is the Modine Pb/Zn Shaft in Jasper County. This project consists of closing two shafts on the Modine Company property in Joplin, one of which is open and within a few hundred feet of a residential area. A pre-bid meeting was held on December 2, 2003, and the contract was awarded to the low bidder, Freddy Van's, Pittsburg, Kansas, in the amount of \$14,500.00. Work will consist of excavating out the openings, placing a polyurethane foam plug in the shaft, filling with tailings, and installing a concrete cap and monument over the shaft. Mr. Cabanas stated the second project is known as the Taylor Shaft Project in Newton County. This shaft is located on land directly adjacent to the George Washington Carver National Monument in Diamond, Missouri. The National Park Service employee who is in charge of the monument requested assistance from the Program to close the shaft as the land where it is located is owned by a group who cooperates with the National Park Service on various activities. Since the area is to be used at various times by the public, the need to close the shaft became a priority. A pre-bid meeting was held on December 29, 2003, and the contract was awarded to Freddy Van's, Pittsburg, Kansas, for a total of \$15,400.00. Work will be complete on or before February 11, 2004. Mr. Cabanas noted there will be a dedication ceremony on Saturday, January 24, 2004, at 2:00 p.m. The Land Reclamation Program will be recognized for the shaft closure effort.

Mr. Cabanas stated that regarding bond forfeiture sites, there are two permanent Program permit areas at Missouri Mining in Putnam County—Pits 17 and 15—which are in the planning and review stages and will be put out to bid this spring with work to be completed by the fall of 2004. These projects consist mainly of deep gully repair and pond renovation.

Ms Garstang asked, when the shafts are plugged, are they being located on GPS so that they are not dug into in the future?

Mr. Cabanas replied yes.

4. PERMITTING

Palmer Limestone – Old Law Permit Renewal (Attachment 2). Mr. Cabanas stated Palmer Limestone was issued a permit to extract coal in 1995. The operator, in addition to mining a quarry in Vernon County, also wanted to mine coal on the same pit so he was issued an Old Law coal permit. The Permanent Program law does allow the issuance of an Old Law permit if the miner is going to be taking other minerals in association with the same pit and if he is able to keep the tonnage of coal at or below 16-2/3 percent of the other minerals extracted. By law, this permit must be issued by the Commission. The law requires the operator to submit a renewal application to verify that the fees and bonding are correct. Palmer Limestone has met these requirements, and it is recommended that the Commission issue this permit renewal to Palmer Limestone for Permit OL95-01.

Dr. Haddock made the motion the Commission approve the renewal of Permit OL95-01 for Palmer Limestone. Ms. Garstang seconded; motion carried unanimously.

5. ENFORCEMENT

In re: Continental Coal, Inc., Case No. 03-0012 DNR (Attachment 3). Ms. Randles stated the Commission should have received a Recommended Order of Dismissal in this case. This was an appeal filed by Continental Coal to the Commission from the staff's issuance of several Notices of Violation and Cessation Orders to the company. Several events have rendered the appeal moot, and the company has requested dismissal. The Commission's approval of this Recommended Order of Dismissal would end this case.

Dr. Haddock made the motion the Commission approve the Recommended Order of Dismissal in the above case regarding Continental Coal. Mr. Mohammadi seconded; motion carried unanimously.

In re: National Refractories and Minerals Corporation, Case No. 03-0008 DNR (Attachment 4). Ms. Randles stated the Commission should also have received a Recommended Order of Dismissal in this case. During the November 19, 2003, meeting the Commission voted to approve a Settlement Agreement. Certain events have occurred pursuant to the Settlement Agreement which make this dismissal appropriate to finalize this case.

Dr. Haddock made the motion the Commission approve the Recommended Order of Dismissal in the above case regarding National Refractories and Minerals Corporation. Mr. Mohammadi seconded; motion carried unanimously.

In re: Holcim (Missouri Coalition for the Environment, et al. v. Missouri Land Reclamation Commission, et al. Ms. Randles noted the Commission had issued a permit to Holcim, and the groups that had challenged issuance of the permit before the Commission then appealed to the Circuit Court of St. Louis County. Ms. Randles stated the Circuit Court entered an Order approving the Commission's decision.

6. BOND RELEASES

Coal: (Attachment 5)

Associated Electric Coop., Inc., PP-02-05, NEMO Mine, Permit 1982-01. Mr. Hall stated this release request is for Phase I release on 36 acres in the amount of \$72,000.00; Phase III release on 6 acres in the amount of \$4,000.00; Phase III release on 3 acres in the amount of \$6,000.00; Phase I, II, and III release on 6 acres in the amount of \$15,000.00; and Complete/Undisturbed release on 3 acres in the amount of \$7,500.00, for a total bond release for this application of \$104,500.00. Mr. Hall stated the Office of Surface Mining reviewed this application, and they have made the determination that the area has been reclaimed properly and that all conditions required to qualify for the types of releases requested have been met and recommend approval of the release requests.

Associated Electric Coop., Inc., PP-02-03, Prairie Hill Mine, Permit 1985-06. Mr. Hall stated this release request is for Phase I release on 178.8 acres in the amount of \$357,600.00 and Complete/Undisturbed release on 89.4 acres in the amount of \$223,500.00, for a total bond release for this application of \$581,100.00. He stated that Phase I release does not include evaluation of vegetation, but is the backfilling and grading, topsoil replacement, and initial seeding. The land use is pasture and some wildlife. Mr. Hall stated that the Office of Surface Mining has concluded that Associated Electric has met all of the reclamation requirements and recommends that the Commission approve this bond release request.

Ms. Garstang made the motion that the Commission approve the above two bond release requests as presented for Associated Electric Coop., Inc, at the NEMO Mine and the Prairie Hill Mine. Dr. Haddock seconded; motion carried unanimously.

Liability Release Application SU-03-001, North American Resources/Frontier in Rehabilitation, Permit 1994, Foster Mine (Attachment 6). Mr. Reed stated the Program has received a liability release application from Marston & Marston, Inc., on behalf of Frontier in Rehabilitation for a portion of Permit 1994-01, North American Resources, Foster Mine. The release request is for Phase I release on 214 acres in the amount of \$348,000.00 and Complete/Undisturbed release on 46.5 acres in the amount of \$116,250.00, for a total bond release amount of \$464,250.00. Phase I includes grading,

backfilling, topsoil replacement, and initial seeding. Mr. Reed stated Frontier in Rehabilitation has met all of its requirements for release of Phase I and Undisturbed liability on portions of Permit 1994-01 at the Foster Mine. The staff recommends the Commission approve the release request for Frontier.

Mr. Mohammadi noted it was his understanding that North American Resources owes some NPDES permits for a land disturbance permit. He asked if the Commission made a decision today, how would that affect the collection of those delinquent fees?

Ms. Randles stated she did not feel a decision by the Land Reclamation Commission today would impact the NPDES issue. She stated it would release Frontier from further Phase I reclamation requirements under the Surface Coal Mining Law and would not have any effect on the water law and regulations and the land disturbance permit requirements.

Mr. Mohammadi stated he understood that North American Resources has filed for bankruptcy. So if the Land Reclamation Commission releases these bonds, the company also owes \$40,000-\$50,000 permit fees to the Water Protection Program.

Mr. Coen stated the bonds cannot be collected for any other purpose other than reclamation. An insurance company is paying for this reclamation, and they are obligated for reclamation only. They are not obligated to pay back permit fees for a company that has gone into bankruptcy.

Ms. Randles stated this will require an agreement between the Commission and Frontier in Rehabilitation. There isn't anything in that agreement that deals specifically with the water issue.

Dr. Haddock made the motion that the Commission approve the above bond release request as presented for North American Resources/Frontier in Rehabilitation, Permit 1994-01, Foster Mine. Ms. Garstang seconded; motion carried unanimously.

Summary of Industrial Minerals Bonds Released by Staff Director (Attachment 7).

Mr. Larsen presented this report to the Commission. He stated the Staff Director has reviewed, evaluated, and approved several Industrial Minerals bond release requests since the November 2003 Commission meeting which are as follows:

Schildberg Construction Co., Inc., Graham Quarry: 15 acres of pasture for a total release amount of \$7,500.00.

Baroid Drilling Fluids, Inc., Cadet Washer Site: 78 acres of wildlife for a total release amount of \$43,000.00. This release constitutes the last of barite mining in Missouri.

Mill Creek Gravel, Site #1: 8 acres of pasture for a total release amount of \$8,000.00.

7. OTHER BUSINESS

Commission Review of Existing Policy Concerning Mining vs. Development. Mr. Coen stated the existing policy was approved by the Commission in 1995. He stated the staff has had situations arise where developers are excavating and selling rock in order to make room for development. According to the existing policy, if the sale of rock occurs and the rock leaves the site, then a mining permit from the Program is needed. The industry has requested that this policy be reviewed again. One of these instances involves Team Excavating who would like to receive an answer today from the Commission on whether or not they need a permit because the company needs to continue to conduct their business and not be on hold while the policy issue is decided.

Team Excavating. Mr. Kevin Thomas, Team Excavating, presented site maps for the Commission's review. Mr. Thomas stated his company primarily develops land for subdivisions, residential, and commercial. He stated that his experience in the development business is that it is not someone searching out places to develop so they can market the rock, but that it has come down to the bare minimums. In the Kansas City area, there are a lot of areas that have not been built up because there is so much rock there that they can't be developed because the costs are too stringent for the project. Mr. Thomas stated he has developed a way to extract rock without blasting which is also used by the Missouri Department of Transportation. He stated his company is currently in a project, on which they have stopped operation, and need a variance to continue with the project. He stated his company is not a mining operation and is a developer and excavator by trade. He stated there is a 3-1/2-acre tract on their current project that is nothing but solid rock. Most of this material is going to remain on the project, but there is about 15,000 tons that will have to come off the area. All through this project, there will be bits and pieces of this all the way through. The majority of this project is all dirt, but there is about 300,000 cubic yards that will be rock. Most of that rock is going to be used on the project, in and around the lake for riprap, in and around the spillways for storm sewers, pipe bedding, etc. All this will be materialized and developed on site.

Mr. DiPardo asked, the part that will be taken off site, will it be sold or used on another project?

Mr. Thomas stated it will be used on his own sites. No money will be changing hands, other than the sites that he has other contracts with. That seems to be where the law is very vague. He stated the law needs to be clarified so his company can do the job properly. Mr. Thomas stated that as long as he is doing it for his own projects, it should not matter. For instance, if he had a yard over here and he is digging a basement over

here, and moving soil from one place and moving it down the road to where he needs to fill in around a basement, it would be the same thing. Mr. Thomas stated he does not have, nor will he have, scales set up. He said his company is having to use the product to be able to build the development, and they have to be able to do it to bid it. He stated there are other contractors out there who will be facing the same situation and need clarification. This is a big project for Kansas City.

Ms. Garstang asked what phase is the project in—how much has been done?

Mr. Thomas stated there are elevations being created now.

Mr. DiPardo asked whether there was going to be a lake?

Mr. Thomas replied there will be a lake. There is a lot of soil stabilization that needs to be done. By his company taking the rock out and being able to screen it for pipe bedding on the job puts off excess emissions which is lime dust which is also soil stabilization. There will be an immense amount of this on this project because of all of the flood ground that is not able to be developed or built on.

Mr. DiPardo stated if Thomas Excavating will be taking the rock and moving it around and not selling it, he did not feel a permit was needed.

Ms. Randles asked if there was an actual variance request that is pending or is this a request for a determination that Thomas Excavating falls outside of the law?

Mr. Thomas stated his company would like a determination to keep someone from coming in later on and say they can't do it. There are areas in Kansas City that can't be built on because the development costs are so high.

Ms. Randles asked whether the rock Mr. Thomas will use on-site is in lieu of material that he would have to haul in from somewhere else if he were not taking it from a location on the site?

Mr. Thomas replied yes. Most of it is cut and fill. The company plans to use everything it gets from the site back on the site.

Ms. Randles stated the material that Mr. Thomas will be using from taking the rock out is in lieu of material that he would have to buy from someone else.

Mr. Thomas stated yes.

Ms. Randles asked Mr. Thomas what is the process that he uses to excavate the rock?

Mr. Thomas stated he has a new device which is a terrain leveler. It is a big drum which grinds the rock out.

Mr. DiPardo asked why is this issue coming before the Commission now?

Mr. Coen stated the Program does not go out and seek these development sites as potential permittees. We only investigate them as complaints are brought to our attention. There was a complaint on this particular development project, and we visited the site. He suggested the Commission make its decision based on, not comparisons with someone else who may have improperly done it, but make a comparison with the law and the current policy. Mr. Coen stated this is why there needs to be a law-rule-policy that clearly defines to everyone what the boundaries are so that we don't get into situations where the staff believes one thing, the company believes one thing, and we bring it to the Commission because no one can sort it out.

Ms. Randles stated that, if we read the law, what Team Excavating is doing is regulated and is required to have a permit. What the Commission is concerned with now is whether the Commission should interpret the law differently generally and with respect to this particular company. There are several issues with regard to this. Ms. Randles' recommendation to the Commission is if it is trying to answer a question for this specific company, perhaps the way to handle it so the company can move on and the Commission can focus on this issue in a general way is to ask Team Excavating to do a variance request and consider it that way.

Mr. Thomas stated he was not opposed to getting the necessary legal paper work. The company has recently hired a consultant to prepare this paper work. What he did have an issue with is going out on public notice as a mining operation. This sends up red flags everywhere. Regardless of whether the development is good, all the public will see is the potential of shooting off a nuclear device to get rock out.

Mr. Larsen noted that it had been mentioned that if the rock is not sold or if it is sold, that might provide a basis of whether or not a permit is required. The law defines surface mining as extraction of minerals for commercial purposes. The law does not say that the mineral needs to be sold to require a permit. The determining factor is not whether or not the mineral is sold or not or whether money exchanges hands, it is whether or not the mineral is used for commercial purposes. That is the issue in this instance.

Ms. Garstang asked if anyone concerned about this operation or project was in attendance?

Mr. Coen replied no.

Mr. Thomas stated the company had to dismiss an employee and that is what started this issue.

Mr. DiPardo asked what was the nature of the complaint?

Mr. Coen stated it was mining without a permit.

Ms. Garstang stated she agreed that this is an issue that needs clarity, and she stated that the Commission and the Program and the mining industry group need to address this so that everyone is clear about when a permit is needed and when it isn't. She did not feel that the Commission was ready to make this decision today.

Ms. Garstang made the motion that if the company submits the proper paper work for a variance, that the Staff Director of the Land Reclamation Program consider that variance and, if he is comfortable with it, then the Commission would support his decision.

Mr. DiPardo asked whether the decision would have to come through the Staff Director or would it come back to the Commission?

Ms. Randles stated the company would submit a permit application and request to have a variance from the normal requirements associated with the permit. It appears that the Program Staff Director would take action on the variance request and would not have to come before the Commission. If the variance were denied, then the operator would have the right to request a hearing.

Mr. Coen asked whether Team Excavating had secured the performance bond with the City of Independence?

Mr. Thomas stated it is pending the decision by the Commission, but the City of Independence is willing to do it.

Mr. Coen stated he felt the Program would feel more comfortable if that bond was in place before the variance is issued.

Mr. Thomas stated that would not be an issue and could be taken care in a few days.

Mr. Larsen stated there is one other option for a company in this type of a position. It is already in the rules. If a company can secure a permit from another governmental agency—city, county, state, or federal—that is equal to or more stringent than the

Program's permitting requirements, reclamation requirements, including the issuance of a bond to guarantee that that is done, Mr. Larsen stated then the Program could automatically issue a permit waiver, following review by the Program staff.

Ms. Garstang stated she would amend her motion to give the company the option to pursue a variance, that the Staff Director of the Land Reclamation Program consider that variance and, if he is comfortable with it, then the Commission would support his decision; and that the Program do all they can to expedite the process. Or as an alternate, Team Excavating would have the option of obtaining a permit from a local entity in lieu of a mining permit. Dr. Haddock seconded; motion carried unanimously.

Mr. Coen noted that it would actually be in concert with the local permit that the company would get a variance from the Program.

Mr. Thomas noted his understanding is that he needs to get the bond from the City of Independence. Once the Program sees that the bond is in place, then the Staff Director can approve the variance.

Ms. Randles stated if the company went with a local register with the Program, the Program would have a chance to make sure that the local entity provides for as stringent controls as the Land Reclamation Program.

Industry Proposal. Mr. Coen stated the industry has provided a suggested, revised policy written in a form that could be made into a rule. The staff has reviewed the suggested policy and has presented its comments and concerns for the Commission's consideration. (Attachment 8) Mr. Coen stated he wants to have a final policy and rule that makes things comfortable for the staff as well as for the industry.

Mr. Ed Twehous, vice president of Twehous Excavating, stated his company does heavy highway, municipal utility, commercial site preparation, and blasting work all over the State of Missouri. He noted his company is one of the largest users of explosives and blasting companies in the state. He stated his company is involved in blasting, excavation, and commercial site readiness. If the 1995 policy is enforced on sites where his company routinely performs work under contract, costs will increase substantially. In order not to be classified as mining, the 1995 policy requires that excavation sites meet all six criteria, including that any mineral commodities produced on the site are utilized in the development and not moved off the site. Mr. Twehous stated his company removes rock and dirt and moving materials for use in construction on or off the site or to clear and level the site and make way for construction all the time. This is especially common in central and south Missouri. For a local project, the location for Lowe's and the Wildwood Crossings Plaza cost the owner approximately \$4 million in just site work to

get the sites to a finished grade. Mr. Twehous stated this work was performed by his company. The blasting and removal of the minerals at the Lowe's and Wildwood Crossings sites was not mining and was for construction purposes. There was considerable blasting done at these sites. The company moved approximately 300,000 cubic yards of material from one side of the road to the other side of the road. Had this contract been delayed or interrupted anytime during the process, due to a determination by the Land Reclamation Program that a mining permit would be required, his company and the developers would have suffered substantial economic losses. Mr. Twehous stated that had the project already been started and stopped after construction had started, his company would have suffered additional mobilization costs of men and equipment of around \$20,000.00 to \$40,000.00. An additional \$20,000.00 to \$40,000.00 would have been incurred had the company been required to stop, knowing that it had a lengthy permit process to go through because the company would have had to move off the project to utilize the equipment somewhere else to keep revenue coming in and then would have had to move back to the site and incur the mobilization again. If the company had decided to keep the equipment on site and to wait out the permit process, the company would have had the investment of several million dollars worth of equipment sitting on the site waiting for the determination to be made. Mr. Twehous stated had it been determined the company did have to go through the permit process, there would have been a major disruption of the company's project management staff because on a project of that size, the company will put project management staff to that project and that would be a project they would have to manage and complete. He suggested that by driving by this project, one could question how there could have been any land reclamation liability on a project like that. To interject a six-month permitting process into this project would have resulted in huge losses for his company as well as the stores locating in the area and the developer of the project. Mr. Twehous stated that requiring a land reclamation permit for this particular project would do nothing to protect the environment, promote conservation of land, or establish recreational, home, and industrial sites or to protect the taxable value of property, beyond what was the natural result of completion of the construction project as it was planned. He noted that his company is associated with a sister company that has a large number of limestone quarries in Missouri and so are familiar with the land reclamation process and want to do it right and want to get around the point of having any confusion or any discrepancy discussion about what we are doing right or what we are doing wrong. We just want to know how to do it right. Mr. Twehous stated his sister companies expect to continue obtaining permits for the quarries, but requiring a mining permit for construction projects makes no sense for his company, for the public good, or for the taxpayers. He noted that when large stores such as Lowe's and Wal-mart come into an area, their construction process with the city is extremely fast and extremely short and they want their store opened as soon as they get to the city and decide that they want to go. Anything such as a six-month land reclamation process is going to hurt the community because a store such

as Lowe's that would have had to stop and wait six months to have public hearings on a mining operation to get a store opened is going to pull out of the community. In closing, Mr. Twehous urged the Commission to revise the policy by adopting the proposed rules submitted for its consideration by the AGC of Missouri and the Missouri Limestone Producers Association.

Mr. Jack Atterberry, Associated General Contractors of Missouri (AGC), stated the process explained by Mr. Twehous is nothing unusual; it is common place. He stated it was his understanding from the November Land Reclamation Commission meeting that the consensus of the Commission was to approach this through a proposed rule rather than a policy, since the adoption of the policy in 1995. He stated the AGC is in total agreement with that. As expressed in the case of Team Excavating, this is an urgent matter. He stated that he did not see a company that is in the business of construction, and not mining, applying for a variance each and every time that they are going to construct something. As an option, either for the Commission or for that company, it presents the same problem as is the case now. Mr. Atterberry noted there are a 1,000 or more sites across the state that are just like this, and it should be considered as to whether or not the Commission wants 1,000 requests a week for a variance. Most likely, this would not be the case. If it is not construction or if it is construction and not mining, and it is not covered to begin with, there is no reason to go through the process of getting the variance from something that didn't apply in the first place. It is suggested that by looking at the rule, the Commission look at the purpose along with some criteria that define the purpose. To define construction, three things need to be considered: (1) is there an engineering plan for the project? (2) is there a construction contract with specific completion dates? and (3) is there a cleanup provision? If these test criteria can be met in relation to a contract, then, regardless of what is done with that material, it is not mining. Mr. Atterberry noted that language for land improvement and an appeal process has been included. He stated Program staff would have to look at the totality of the circumstances that are involved and come to a judgment. The appeal process provides that if someone disagrees with that judgment, they could request a meeting with the Staff Director. If there is still a disagreement, they could request to come before the Commission to make their presentation. To look at each and every construction project as a potential applicant for a Land Reclamation permit would be problematic, both for the people in the industry and for the Program staff.

Ms. Garstang stated she thanked the AGC for developing the draft for a proposed rule and that she felt she wanted more time to review it. Not trying to speak for the rest of the Commissioners, but the action taken by the Commission today regarding Team Excavating, caught in between without a better understanding of the current policy, she stated her intent was not to require a variance every time for these type of sites. It would be to get through the period until a decision is made on something clearer that everyone can understand.

Mr. Atterberry stated he felt that was the urgency of the rule process because it could take as long as a year to get it in place.

Ms. Garstang stated she did not feel prepared to make a decision today, as she felt more time was needed to review the staff's comments and the draft proposed rule itself.

Mr. DiPardo stated the Commission would review the comments from the Program staff and look at what the industry has presented and give direction back to the Program staff.

Mr. Larsen stated he will send the Commissioners a copy of the policy adopted in 1995 to assist the Commission in the review of the AGC draft proposed rule and the staff's comments.

Mr. Coen noted that the Commission had not had an opportunity to review the staff's comments, but by the March 2004 meeting a decision needs to be made regarding this issue.

Status Update on Proposed In-Stream Sand and Gravel Mining Rules (Attachment 9). Mr. Larsen stated numerous public meetings were held in an attempt to develop these rules. These rules are a proposal for standards for how gravel should be removed from creek channels or stream systems in Missouri. These proposed rules do two things—permitting requirements and performance standards. These proposed rules were adopted by the Commission in May 2003 and were filed with the Secretary of State's Office and the Joint Committee on Administrative Rules on December 16, 2003. It is planned that these rules will be published in the *Missouri Register* on February 1, 2004; and there will be a 90-day public comment period for these rules which ends on May 1, 2004. A formal hearing concerning these rules is tentatively scheduled to be held before the Land Reclamation Commission on March 25, 2004, at 1:00 p.m. following the regular Commission meeting.

Mr. Larsen noted the Program/Commission recently received a comment letter from the Shannon County Commission. The development of the sand and gravel rules is a highly contentious issue. There are many advocates and opponents to it.

Mr. DiPardo stated that upon receipt of this letter, he spoke with County Commissioners Cox and Orchard of the Shannon County Commission and informed them that County Commissions in the State of Missouri are exempt from these rules. The Shannon County residents were telling their Commissioners that the county could not come onto their property to extract gravel. Mr. DiPardo stated he informed Mr. Orchard that the County Commission could contact as many landowners as they wanted and make arrangements to go on their property to clean out the landowners' creeks, using their own equipment, without needing a permit, provided there is no sand or gravel sold.

Mr. Larsen noted there is a lot of misinformation as to what can and cannot be done regarding removal of sand and gravel from streams. The staff will prepare a response letter to the Shannon County Commission.

Mr. DiPardo suggested that a copy of this response letter be mailed to all of the County Commissions in the State of Missouri.

Mr. Larsen noted this would be done.

Status Update on Proposed Rule Amendments to the Land Reclamation Act

(Attachment 10). Mr. Larsen stated The Land Reclamation Act was amended by the Legislature in 2001. A number of things were changed in the legislation that deals primarily with the public's participation in the permitting process, as well as several other things. Mr. Larsen noted a work group was formed to study the Act and develop amendments that would mirror the legislative changes in 2001. The Commission adopted the amendments at its November 21, 2002, meeting. These changes have been sent to the Department's Division of Air and Land Protection to then be submitted to the Department Director for his signature. It is hoped that the proposed amendments will be published in the *Missouri Register* on March 1, 2004. A 30-day public comment period would follow the publication date.

Activities Report as Required by the Land Reclamation Act (Attachment 11). Mr. Coen presented this report to the Commission. He noted that changes to the Act in 2001 require that an annual report be made to the Commission of the activities of the prior calendar year.

Ms. Garstang asked if there is a certain balance in the Industrial Minerals fund that automatically turns the money over to general funds?

Mr. Coen replied no, not to his knowledge.

Ms. Garstang asked, under the present rule or in the rules being considered, if the fees can be lowered?

Mr. Coen stated it is already in the rule that there is a maximum on the fees and as long as we stay under that maximum, we can set, by rule, where those fees need to be fixed.

Land Reclamation Program Employees of the Month for December 2003 and

January 2004. Mr. Coen noted the LRP Employees of the Month for December was Stuart Miller and for January, Ron Dumey.

Closed Session. Ms. Garstang made the motion that the Land Reclamation Commission meet in Closed Session at 8:00 a.m. on February 2, 2004, and at 8:30 a.m. on March 25, 2004, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Dr. Haddock seconded; motion carried unanimously.

Adjournment. The meeting was adjourned at 12:00 p.m.

Respectfully submitted,

Chairman